IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

Crl.MC.No. 601 of 2007()

CC.349/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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PETITIONER: ACCUSED

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1. DENNIS, S/O. JOSEPH @ OUSEPH,
   MADANA HOUSE, ALOOR, THRISSUR.

2. JOSEPH @ OUSEPH, S/O. DEVASSY,
   -DO- -DO-

BY ADV. SMT.P.A.ANITHA

RESPONDENTS: COMPLAINANT/STATE

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1. P.R.VIJAYAN, S/O. RAVUNNI,
   PALLATHPARAMBIL HOUSE, ELINGIPRA,
   PARIYARAM, THRISSUR.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.601 of 2007

Dated this the 6th day of March 2007

O R D E R

The petitioners are accused in a prosecution under Sections 420 and 468 read with Section 34 of the I.P.C. Complaint was filed before the learned Magistrate and the same was referred to the police under Section 156(3) Cr.P.C. Investigation was completed and the final report was filed against the petitioners.

2. The petitioners, along with the defacto complainant/ the first respondent have come before this court with the prayer that the powers under Section 482 Cr.P.C may be invoked to bring the prosecution initiated against them to premature termination.

3. What is the reason? The short contention raised is that the matter has been settled between the parties. The allegation relates to a cheque and the complaint was filed because of disagreement between the parties. As the parties have settled the dispute, the matter can be brought to premature termination by invoking the powers under Section 482 Cr.P.C. This, in short, is the plea.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this court under Section 482 Cr.P.C. Since it is an extraordinary inherent jurisdiction, such powers are not to be invoked, as a matter of course. Compelling reasons must be shown to exist to justify invocation of such powers. The mere fact that it will be more convenient for the parties to get such relief from this court, cannot certainly persuade this court to invoke such powers. Will justice fail if such powers are not invoked? This is the crucial question to be considered. The dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] cannot be understood to mean that the distinction between compoundable and non-compoundable offences stands obliterated.

5. I am unable to find any such circumstances in this case which can justify the invocation of the powers under Section 482 Cr.P.C. I am satisfied that this is a fit case where the petitioners and the first respondent must appear before the learned Magistrate and report to the learned Magistrate, the composition of the compoundable offence. They will, of course, be entitled to argue before the learned Magistrate under Section 239/240 Cr.P.C that no charges are liable to be framed for the non-compoundable offence alleged against the petitioners. In

any view of the matter, I do not find any justification in the prayer for invocation of the powers under Section 482 Cr.P.C.

6. With the above observation, this Criminal Miscellaneous Case is in these circumstances dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006